

HOUSE BILL 2362  
By Casada

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 6, Part 2, relative to the circumstances under which an arrest warrant or a criminal summons may be issued.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-6-205, is amended by deleting the section in its entirety and substituting instead the following:

(a) If the magistrate is satisfied from the written examination that there is probable cause to believe the offense complained of has been committed and that there is probable cause to believe the defendant has committed it, then the magistrate shall issue a warrant of arrest. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part; provided, that there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Except as provided in subsection (b), if the affiant is not a law enforcement officer, as defined by § 39-11-106(21), or if none of the affiants in the case of multiple-affiants is a law enforcement officer, as defined by § 39-11-106(21), then a criminal summons as provided in § 40-6-215 shall issue instead of a warrant of arrest; provided, however, that in the case of multiple-affiants, if one or more of the affiants is a law enforcement officer as defined by § 39-11-106(21), then the magistrate may issue a warrant of arrest.

(b) Notwithstanding the provisions of subsection (a), the magistrate may issue a warrant of arrest notwithstanding the fact that the affiant is not a law enforcement officer, or, in the case of multiple-affiants, that none of the affiants is a law enforcement officer if such magistrate finds there is probable cause to believe that:

(1) The issuance of a warrant of arrest rather than a criminal summons is necessary to prevent an immediate threat of imminent harm to a victim as defined in § 36-3-601(8), and makes a written finding of fact that an arrest warrant rather than a criminal summons is necessary;

(2) The offense for which the warrant will issue is for a violation of § 39-14-121, relative to worthless checks; or

(3) The offense for which the warrant will issue:

(A) Is for a violation of § 39-14-103; and

(B) Involves the theft of property from a retail merchant under any of the circumstances set out in §39-14-146.

SECTION 2. Tennessee Code Annotated, Section 40-6-215, is amended by deleting subsection (a) and substituting instead the following:

(a)

(1) Unless otherwise provided in this subsection, as an alternative to a warrant of arrest as provided in §§ 40-6-201 - 40-6-214, the magistrate, judge or clerk may issue a criminal summons instead of a warrant of arrest.

(2) Except as provided in subdivision (3) of this subsection, when an affiant is not a law enforcement officer as defined by § 39-11-106(21), or none of the affiants in the case of multiple-affiants is a law enforcement officer as defined by § 39-11-106(21), the magistrate, judge or clerk shall issue a summons rather than a warrant of arrest.

(3) Notwithstanding the provisions of subdivision (2), the magistrate may issue a warrant of arrest rather than a summons notwithstanding the fact that the affiant is not a law enforcement officer, or, in the case of multiple-affiants, that none of the affiants is a law enforcement officer if such magistrate finds there is probable cause to believe that:

(A) The issuance of a warrant of arrest rather than a criminal summons is necessary to prevent an immediate threat of imminent harm

to a victim as defined in § 36-3-601(8), and makes a written finding of fact that an arrest warrant rather than a criminal summons is necessary;

(B) The offense for which the warrant will issue is for a violation of § 39-14-121, relative to worthless checks; or

(C) The offense for which the warrant will issue:

(i) Is for a violation of § 39-14-103; and

(ii) Involves the theft of property from a retail merchant

under any of the circumstances set out in §39-14-146.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.